

Assembly Bill No. 2612

CHAPTER 393

An act to amend Sections 12841.4, 19204, 19220, 19312, 46003, 46004.1, 46009, 46013, 46013.1, 46013.2, and 46014.1 of the Food and Agricultural Code, and to amend Section 110485 of the Health and Safety Code, relating to food and agriculture.

[Approved by Governor September 25, 2010. Filed with
Secretary of State September 27, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2612, Committee on Agriculture. Food and agriculture: omnibus bill.

(1) Existing law requires every person who is the first to sell any agricultural- or structural-use pesticide product for use in this state that is packaged in rigid, nonrefillable, high-density polyethylene (HDPE) containers of 55 gallons or less to establish a recycling program, or demonstrate participation in a recycling program to ensure HDPE containers are recycled. Existing law requires that the recycling program be certified by an accredited 3rd-party organization, as specified, as being in compliance with certain standards, as specified. Existing law requires any person who is required to establish or participate in this recycling program to provide to the Director of Pesticide Regulation, at least annually, a document certifying that this requirement has been met.

This bill would instead require the registrant of any production agricultural- or structural-use pesticide product for use in this state that is packaged in HDPE containers of 55 gallons or less to establish a recycling program, or demonstrate participation in a recycling program to ensure HDPE containers are recycled. The bill would delete the 3rd-party certification requirements pertaining to the recycling program. The bill would require any registrant who is required to establish or participate in this recycling program to provide to the director, at least annually, a document certifying that this requirement has been met.

(2) Existing law requires a person engaged in the business of operating a collection center to obtain a license from the Department of Food and Agriculture for each collection center operated. "Collection center" is defined to mean a receiving area for the temporary storage of animal carcasses, packinghouse waste, or other products before transportation to a licensed rendering plant. Existing law makes a violation of these provisions a crime.

This bill, instead, would define "collection center" to mean a receiving area for the temporary storage of animal carcasses, packinghouse waste, or other products before transportation to a licensed rendering plant or pet food processor. Because this bill would change the definition of an existing crime, it would impose a state-mandated local program.

(3) Existing law requires persons engaged in certain businesses, including, among others, rendering, pet food processing, and operating a collection center, to obtain a license from the department. Existing law provides that those licenses are valid for a year from the date of issuance.

This bill, instead, would provide that those licenses shall expire on December 31 of each year.

(4) Existing law requires any person or entity who engages in the transportation of inedible kitchen grease, as defined, to be registered with the department. An applicant for registration as a transporter of inedible kitchen grease is required to include a registration fee of \$100, except for any renderer who registers.

This bill would also exempt a collection center that registers from this registration fee.

(5) Existing law, the California Organic Products Act of 2003, provides that persons engaged in the production or handling of raw agricultural products sold as organic or the processing or handling of processed food sold as organic shall register with the Secretary of Food and Agriculture. Under existing law the registration form must include, among other things, a map showing the location and dimensions of the facility or farm where the products are produced. If the registrant has not had control of the property for 36 months, existing law requires that the registrant provide the land use history of the property for the last 36 months from the previous owners. If the registrant does not own the property, existing law requires the registrant to provide documentation from the owner granting permission for the parcel to be registered as organic.

This bill would provide that, with respect to the registration form, producers shall include a detailed physical description of the location and dimensions of the facility or farm where the products are produced and exempt producers shall, in addition to the physical description, include a map, as specified. The bill would define an exempt producer as a producer whose annual gross agricultural income from organic sales totals \$5,000 or less. The bill would provide that the above requirements regarding prior land use and permission from the owner would only apply to exempt producers or exempt handlers, and would define an exempt handler as a handler whose annual gross agricultural income from organic sales totals \$5,000 or less.

(6) Under existing law a producer required to register with the secretary is required to list all substances applied to the crop, soil, or irrigation water as part of the registration.

Under this bill only producers whose annual gross agricultural income from organic sales totals \$5,000 or less would be required to include this information in their registration.

(7) Existing law establishes a schedule of fees that the registrant is required to pay to the secretary based on the gross sales of the registrant.

This bill would allow the secretary to require the registrant to submit its gross sales by commodity and acreage and to provide the exact dollar amount of sales of \$25,000,001 or more.

This bill would also authorize the secretary to adopt regulations that supersede the registration provisions applicable to persons engaged in organic production, processing, and handling to the extent reasonably necessary to provide an online system of registration.

(8) Existing law requires the secretary to establish the California Organic Products Advisory Committee to advise the secretary regarding his or her responsibilities under the act. Under existing law the committee is comprised of 15 members and allows the members to have alternates. Existing law provides that 6 members and their alternates must be producers, 2 processors, 2 consumer representatives, 2 technical representatives, one wholesale distributor, one environmental representative, and one retail representative. Existing law provides that alternates at large may be appointed as specified.

This bill would delete the provisions regarding the appointment of alternates at large.

(9) Existing law imposes, until January 1, 2011, a \$100 food safety fee on every person who is engaged in the manufacture, packing, or holding of processed food.

This bill would extend that fee until January 1, 2016.

(10) This bill would make certain conforming and technical changes.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 12841.4 of the Food and Agricultural Code is amended to read:

12841.4. (a) Every registrant of any production agricultural- or structural-use pesticide product sold for use in this state that is packaged in rigid, nonrefillable, high-density polyethylene (HDPE) containers of 55 gallons or less shall establish a recycling program, or demonstrate participation in a recycling program to ensure HDPE containers are recycled. Container recycling must comply with the American National Standards Institute American Society of Agriculture and Biological Engineers Standard S596, entitled Recycling Plastic Containers from Pesticides and Pesticide-Related Products, as published in February 2006. The records required by these standards shall be maintained for three years and shall be subject to audit by the director.

(b) Any registrant who is required to establish or participate in a recycling program pursuant to this section shall provide to the director, at least annually, a document certifying that this requirement has been met.

(c) (1) The director may adopt regulations to carry out the purposes of this section. Upon a federal pesticide container recycling program being

adopted, the director may adopt regulations to conform to the federal program.

(2) It is the intent of the Legislature in enacting this section that any regulatory standards adopted by the department shall be at least as stringent as those standards referred to in subdivision (a).

(d) Commencing September 1, 2010, the department shall estimate a recycling rate for pesticide containers and propose suggestions for program improvements and post this information annually on its Internet Web site.

SEC. 2. Section 19204 of the Food and Agricultural Code is amended to read:

19204. "Collection center" means a receiving area for the temporary storage of animal carcasses, packinghouse waste, or other products before transportation to a licensed rendering plant or pet food processor.

SEC. 3. Section 19220 of the Food and Agricultural Code is amended to read:

19220. A license granted under this chapter shall expire on December 31 of each year.

SEC. 4. Section 19312 of the Food and Agricultural Code is amended to read:

19312. (a) Registration shall be made with the department and shall include all of the following:

- (1) The applicant's name and address.
 - (2) A description of the operations to be performed by the applicant.
 - (3) The vehicles to be used in the transportation.
 - (4) A registration fee of one hundred dollars (\$100).
 - (5) A list of the names of the drivers employed by the transporter who transport inedible kitchen grease subject to this article and their drivers' license numbers.
 - (6) Any other information that may be required by the department.
- (b) Any renderer or collection center that registers pursuant to this article is not required to pay the fee prescribed in this section.
- (c) The department may refuse to issue an original or renewal registration certificate to any applicant for which the grounds specified in subdivisions (a) to (e), inclusive, of Section 19314 exist.
- (d) (1) The applicant may appeal the decision of the department to refuse to register the applicant.
- (2) The department shall establish procedures for the appeals process, to include a noticed hearing.
- (3) The department may reverse a decision to refuse to register the applicant, upon a finding of good cause to do so.

SEC. 5. Section 46003 of the Food and Agricultural Code is amended to read:

46003. (a) The secretary shall establish an advisory committee, which shall be known as the California Organic Products Advisory Committee, for the purpose of advising the secretary with respect to his or her responsibilities under this act and Article 7 (commencing with Section

110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The advisory committee shall be comprised of 15 members. Each member may have an alternate. Six members and their alternates shall be producers, at least one of whom shall be a producer of meat, fowl, fish, dairy products, or eggs. Two members and their alternates shall be processors, one member and his or her alternate shall be wholesale distributors, two members and their alternates shall be consumer representatives, one member and his or her alternate shall be environmental representatives, two members and their alternates shall be technical representatives with scientific credentials related to agricultural chemicals, toxicology, or food science, and one member and his or her alternate shall be retail representatives. Except for the consumer, environmental, and technical representatives, the members of the advisory committee and their alternates shall have derived a substantial portion of their business income, wages, or salary as a result of services they provide which directly result in the production, handling, processing, or retailing of products sold as organic for at least three years preceding their appointment to the advisory committee. The consumer and environmental representatives and their alternates shall not have a financial interest in the direct sales or marketing of the organic product industry and shall be members or employees of representatives of recognized nonprofit organizations whose principal purpose is the protection of consumer health or protection of the environment. The technical representatives and their alternates shall not have a financial interest in the production, handling, processing, or marketing of the organic products industry. The technical representatives may be involved in organic research or technical review providing they have no financial benefit from results of the research project or technical review.

(c) An alternate member shall serve at an advisory committee meeting only in the absence of, and shall have the same powers and duties as, the category whom he or she is representing as alternate, except for duties and powers as an officer of the committee. The number of alternates present who are not serving in the capacity of a member shall not be considered in determining a quorum.

(d) An alternate member may serve at an advisory committee subcommittee meeting only in the absence of, and shall have the same powers and duties as, the member whom he or she is designated as alternate, except for duties and powers as a subcommittee chairperson.

(e) The members of the advisory committee and their alternates described in subdivision (b) shall be reimbursed for the reasonable expenses actually incurred in the performance of their duties, as determined by the advisory committee and approved by the secretary.

(f) The secretary or his or her representative, the State Public Health Officer or his or her representative, and a county agricultural commissioner may serve as ex officio members of the advisory committee.

SEC. 6. Section 46004.1 of the Food and Agricultural Code is amended to read:

46004.1. Unless defined pursuant to the National Organic Program (NOP), the following words and phrases, when used in this act, shall have the following meanings:

(a) “Act” means this chapter. It also means the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.).

(b) “Categorical products” means categories of products of like commodity such as apples, salad products, etc. and does not require variety specific information.

(c) “Enforcement authority” means the governmental unit with primary enforcement jurisdiction, as provided in Section 46008.

(d) “Exempt handler” means a handling operation that sells agricultural products as “organic” but whose gross agricultural income from organic sales totals five thousand dollars (\$5,000) or less annually.

(e) “Exempt producer” means a production operation that sells agricultural products as “organic” but whose gross agricultural income from organic sales totals five thousand dollars (\$5,000) or less annually.

(f) “Handle” means to sell, process, or package agricultural products.

(g) “Handler” means any person engaged in the business of handling agricultural products, but does not include final retailers of agricultural products that do not process agricultural products.

(h) “Handling operation” means any operation or portion of an operation, except final retailers of agricultural products that do not process agricultural products that (1) receives or otherwise acquires agricultural products, and (2) processes, packages, or stores agricultural products.

(i) “NOP” means the National Organic Program established pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted for implementation.

(j) “Person” means any individual, firm, partnership, trust, corporation, limited liability company, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, other governmental agency within the state, and any representative, agent, or agency of any of the foregoing.

(k) “Processing” means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes packaging, canning, jarring, or otherwise enclosing food in a container.

(l) “Secretary” means the Secretary of Food and Agriculture.

(m) “USDA” means the United States Department of Agriculture.

SEC. 7. Section 46009 of the Food and Agricultural Code is amended to read:

46009. Any person subject to this act that does not pay the registration fee within 10 days of the date on which the fee is due and payable shall pay a penalty of 10 percent of the total amount determined to be due plus interest at the rate of 1.5 percent per month on the unpaid balance.

SEC. 8. Section 46013 of the Food and Agricultural Code is amended to read:

46013. Any producer, handler, processor, or registered certification organization subject to this chapter that does not pay the fee within 10 days of the date on which the fee is due and payable shall pay a penalty of 10 percent of the total amount determined to be due plus interest at the rate of 1.5 percent per month on the unpaid balance.

SEC. 9. Section 46013.1 of the Food and Agricultural Code is amended to read:

46013.1. (a) Every person engaged in this state in the production or handling of raw agricultural products sold as organic, and retailers that are engaged in the production of products sold as organic, and retailers that are engaged in the processing, as defined by the NOP, of products sold as organic, shall register with the agricultural commissioner in the county of principal operation prior to the first sale of the product. All processors of organic agriculturally derived products that are not required to be registered as outlined in subdivision (b) must register with the secretary. Each registrant must annually renew the registration unless no longer engaged in the activities requiring the registration. Each registrant shall provide a complete copy of its registration to the county agricultural commissioner in any county in which the registrant operates.

(b) Every person engaged in this state in the processing or handling of processed products pursuant to Section 110460 of the Health and Safety Code, and pet food pursuant to Section 18653, and cosmetics pursuant to Section 111795 of the Health and Safety Code, including processors of alcoholic beverages, fish and seafood, shall register with the State Public Health Officer.

(c) Registration pursuant to this section shall be on a form either provided by the secretary or approved by the secretary and shall be valid for a period of one calendar year from the date of validation by the secretary or county agricultural commissioner of the completed registration form.

(d) The information provided on the registration form shall include all of the following:

(1) The nature of the registrant's business, including the categorical products produced, handled, or processed that are sold as organic and the names and registration numbers of those persons for whom they sell product as applicable.

(2) (A) For producers, a detailed physical description of the precise location and dimensions of the facility or farm where the products are produced.

(B) For exempt producers, in addition to the physical description specified in subparagraph (A), a map describing the boundaries and dimensions of the production area and all adjacent land uses, assigning field numbers to distinct fields or management units, and describing the size of each field or management unit.

(C) When the exempt producer or exempt handler has not had control of the property being registered for at least 36 months, documentation shall

be provided from previous owners or managers that shows the 36-month land use history. When the exempt producer or exempt handler is not the owner, documentation shall be provided from the owner granting permission for the parcel to be registered as organic by the exempt producer or exempt handler.

(3) Sufficient information, under penalty of perjury, to enable the secretary or county agricultural commissioner to verify the amount of the registration fee to be paid in accordance with this act.

(4) The names of all certification organizations or governmental entities, if any, providing organic certification to them.

(5) In the case of exempt producers, for each field or management unit, a list of all substances applied to the crop, soil, growing medium, growing area, irrigation water or postharvest wash or rinse water, or seed, including the source of the substance, the brand name, if any, the rate of application, and the total amount applied in each calendar year, for at least the applicable time periods specified in this act.

(e) The registration form shall include a separate “public information sheet” or its equivalent that shall include:

(1) The name and address of the registrant.

(2) The nature of the registrant’s business, including the categorical products produced, handled, or processed that are sold as organic.

(3) The names of all certification organizations or governmental entities, if any, providing certification pursuant to the NOP and this act.

(f) A registration form shall be accompanied by payment of a nonrefundable registration fee by producers, handlers, and processors, which shall be based on gross sales by the registrant of product sold as organic in the calendar year that precedes the date of registration or, if no sales were made in the preceding year, then based on the expected sales during the 12 calendar months following the date of registration. Unless specified elsewhere the fee is based according to the following schedule:

Gross Sales		Registration Fee
\$	0 – 4,999	\$ 25
\$	5,000 – 10,000	\$ 50
\$	10,001 – 25,000	\$ 75
\$	25,001 – 50,000	\$ 100
\$	50,001 – 100,000	\$ 175
\$	100,001 – 250,000	\$ 300
\$	250,001 – 500,000	\$ 450
\$	500,001 – 1,000,000	\$ 750
\$	1,000,001 – 2,500,000	\$ 1,000
\$	2,500,001 – 5,000,000	\$ 1,500
\$	5,000,001 – 15,000,000	\$ 2,000
\$	15,000,001 – 25,000,000	\$ 2,500
\$	25,000,001 – and above	\$ 3,000

(1) Any person required to register pursuant to this section whose registration fee would be less than seventy-five dollars (\$75) shall pay an initial registration fee of seventy-five dollars (\$75). Thereafter, the amount of the annual fee shall be as specified above or, according to the applicable classification, as described in paragraphs (2) to (9), inclusive.

(2) Any person selling a multi-ingredient product in which less than 70 percent of the ingredients are organic shall pay a fee of one hundred dollars (\$100) or one-half of the amount that would be due based on the above chart, whichever is more.

(3) Producers that sell processed product shall pay fees based on the value of raw product prior to being processed and the value of any product sold as unprocessed.

(4) Any person that packs, repacks, labels, sorts, or otherwise handles any organic product that is outside the jurisdiction of the State Public Health Officer and that does not take title or manage the sale of the product, but provides only handling services for organic product, shall register and pay one hundred dollars (\$100) per year.

(5) Commission merchants or brokers that do not take possession or title of the product but arrange for the sale of the product shall register and pay one hundred dollars (\$100) per year.

(6) A retail store engaged in the handling or processing of organic products shall register and pay a fee of one hundred dollars (\$100) for each store location that processes organic products onsite.

(7) Any person that provides temporary storage or transportation for organic product and does not handle the raw unpackaged product does not have to register.

(8) Any person that hires any other person for custom packing or labeling shall register and pay a fee based on the total sales of product custom produced for them as outlined in the chart above. In addition to the required registration information above the person must disclose on the registration form the names of all companies that pack and process for them.

(9) Any person required to register pursuant to this section that fits the description of more than one of the persons described above shall pay the greater of the multiple amounts.

(10) The secretary may require any producer, handler, processor, or other organic registrant to provide the exact dollar amount of gross sales of twenty-five million one dollars (\$25,000,001) or more in lieu of the range specified in subdivision (f).

(11) The secretary may require any producer, handler, processor, or other organic registrant to submit gross sales by commodity and gross sales by acreage.

(g) The secretary may adopt regulations that supersede the terms of this section to the extent reasonably necessary to provide an online system of registration for those required to register pursuant to this section.

SEC. 10. Section 46013.2 of the Food and Agricultural Code is amended to read:

46013.2. (a) To the extent feasible, the secretary shall coordinate the registration and fee collection procedures of this section with similar licensing or registration procedures applicable to registrants.

(b) The secretary or county agricultural commissioner shall deny a registration submission that is incomplete or not in compliance with this act.

(c) A registrant shall, within a reasonable time, notify the secretary of any change in the information reported on the registration form and shall pay any additional fee owed if that change results in a higher fee owed than that previously paid.

(d) At the request of any person, the “public information sheet” described in subdivision (e) of Section 46013.1 for any registrant shall be made available for inspection and copying at the main office of the department and each county agricultural commissioner. Copies of the “public information sheet” shall also be made available by mail, upon written request. The secretary or county agricultural commissioner may charge a reasonable fee for the cost of reproducing a “public information sheet.” Except as provided in this subdivision, a registration form is exempt from Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(e) The secretary, in consultation with the California Organic Products Advisory Committee, may suspend the registration program set forth in this section if the secretary determines that income derived from registration fees is insufficient to support a registration enforcement program.

(f) A registration is considered legal and valid until revoked, suspended, or until the expiration of the registration.

(g) The registration revocation process shall be in conjunction with other provisions of this act. The secretary or county agricultural commissioner’s office may initiate the revocation process for failure to comply with the NOP or this act. Any person against whom the action is being taken shall have the opportunity to appeal the action and be afforded the opportunity to be heard in an administrative appeal. This appeal shall be administered by either the state or county agricultural commissioner’s office.

(h) When the registration fee is not paid within 60 days from the expiration date, the account shall be considered closed and the registration voided. A notification shall be sent to the registrant and the certifier, if applicable, notifying them the registrant is no longer able to market products as organic until the account is paid in full.

(i) Any producer, handler, processor, or certification agency subject to this chapter that does not pay the fee within 10 days of the date on which the fee is due and payable shall pay a penalty of 10 percent of the total amount determined to be due plus interest at the rate of 1.5 percent per month on the unpaid balance.

SEC. 11. Section 46014.1 of the Food and Agricultural Code is amended to read:

46014.1. (a) Any certification organization that certifies product in this state sold as organic shall register with the secretary and shall thereafter

annually renew the registration, unless the organization is no longer engaged in the activities requiring the registration. Registration shall be on a form provided by the secretary, shall include a copy of accreditation by the USDA or proof of application if applicable.

(b) Each certification organization shall pay to the secretary an annual registration fee of twenty-five dollars (\$25) for each client they have certified in this state up to a maximum of two hundred fifty dollars (\$250). Any registration submitted by a certification organization shall be made available to the public for inspection and copying. The secretary may audit the organization's certification procedures and records at any time, but any records of the certification organization not otherwise required to be disclosed shall be kept confidential by the secretary.

(c) The secretary and the county agricultural commissioners under the supervision of the secretary shall, if requested by a sufficient number of persons to cover the costs of the program in a county as determined by the secretary, establish a certification program. This program shall meet all of the requirements of this act. In addition, this program shall meet all of the requirements of the federal certification program, including federal accreditation. The secretary shall establish a fee schedule for participants in this program that covers all of the department's reasonable costs of the program. A county agricultural commissioner that conducts a voluntary certification program pursuant to this section shall establish a fee schedule for participants in this program that covers all of the county's reasonable costs of the program. The secretary may not expend funds obtained from registration fees collected under this chapter for the purposes of adopting or administering this program. The certification fee authorized by this subdivision is due and payable on January 1 or may be prorated before the 10th day of the month following the month in which the decision to grant the certification is issued. Any person who does not pay the amount that is due within the required period shall pay the enforcement authority providing the certificate a penalty of 10 percent of the total amount determined to be due, plus interest at the rate of 1.5 percent interest per month on the unpaid balance.

SEC. 12. Section 110485 of the Health and Safety Code is amended to read:

110485. (a) Every person who is engaged in the manufacture, packing, or holding of processed food in this state shall pay a food safety fee of one hundred dollars (\$100) to the department in addition to any fees paid pursuant to Section 110470.

(b) Revenue received pursuant to this section shall be deposited in the Food Safety Fund created pursuant to Section 110050. A penalty of 10 percent per month shall be added to any food safety fee not paid when due.

(c) Upon appropriation, the food safety fees deposited in the Food Safety Fund shall be used by the department to assist in developing and implementing education and training programs related to food safety. These programs shall be developed in consultation with representatives of the food

processing industry. Implementation shall include education and training in the prevention of microbial contamination.

(d) This section does not apply to companies exclusively involved in flour milling, dried bean processing, or in the drying or milling of rice, or to those individual registrants the director determines should not be assessed because substantial economic hardship would result to those registrants. For the purposes of this subdivision, the substantial hardship exemption shall be extended only to registrants whose wholesale gross annual income from the registered business is twenty thousand dollars (\$20,000) or less.

(e) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2016, deletes or extends that date.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.